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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

On State

18 NOV 1975

James L. Malone, Esq.
General Counsel
United States Arms Control and
Disarmament Agency
Washington, D.C. 20451

Dear Mr. Malone:

We have received your letter of November 4, 1975, in which you forwarded a revised draft of a bill which would implement the Biological Weapons Convention. As the draft is substantially responsive to our previous written comments sent to the NSC on October 29, 1975, and our remarks at our meeting on November 3, we have no further comments or suggestions.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Distribution:

Orig - Addressee
1 - OGC
 - OLC Subject
1 - OLC Chrono
OLC: WPB: sk (11 Nov 75)



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Approved For Release 2005/08/24 : CIA-RDP77M00144R00060013005-0
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Journal - Office of Legislative Counsel

Page 2

Friday - 14 November 1975

25X1

4. BRIEFINGS Accompanied Joseph Kokalas, OSI, to brief George Berdes, Consultant on the Subcommittee on International Security and Scientific Affairs, Committee on International Relations, on chemical warfare in the USSR and verification problems for the United States.

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7. CONSTITUENT Took a call from Dave Callison, in the office of Senator Bob Packwood (R., Ore.). Callison was handling a letter from a constituent who asked why some documents of the Warren Commission were not to be released for 50 years. I briefly explained the Agency's history of cooperation with the Warren Commission, but referred him to the National Archives for an answer to his basic question.

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8. LEGISLATION James Malone, General Counsel, Arms Control and Disarmament Agency, called to ask if we could attend a conference on the draft bill implementing the biological warfare convention on Monday, 17 November at 12:30 p.m. to be held at the State Department. I told him we could.

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Approved For Release 2005/08/24 : CIA-RDP77M00144R000600130005-0

SECRET

Journal - Office of Legislative Counsel
Monday - 17 November 1975

Page 3

25X1

10. [REDACTED] LIAISON I took a call from Rick Gilmore, on the staff of the Subcommittee on Multinational Corporations, Senate Foreign Relations Committee, who said that even though Senator Dick Clark (D., Iowa) is not going to Moscow that the Senator felt that Mr. Gilmore should still go. Mr. Gilmore wanted to know what I thought about his making the trip without the Senator. I told him that we were not able to comment one way or the other on this as the matter was outside our field of responsibility. He asked me to think about it and call him back.

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11. [REDACTED] LEGISLATION [REDACTED] OGC, 25X1
and I went to a conference at Arms Control and Disarmament Agency concerning the State Department's draft bill to implement the convention on biological weapons. Representatives from the State Department, Justice Department and Arms Control and Disarmament Agency were present. (See Memorandum for the Record.)

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12. [REDACTED] LIAISON Took a call from Joan Maloney, of the International Division of GAO. Maloney, who has a top secret clearance, is currently working at the Pentagon on a GAO project to study the American military posture in the Far East. She has learned of the existence of the AEGIS system--a CIA-run computer program which could give her a bibliography of all classified publications on the subject. She asked that a bibliography be prepared for her and gave me the names of Agency officials responsible for the system. I told her I would check with these employees.

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Approved For Release 2005/08/24 : CIA-RDP77M00144R000600130005-0
600130005-0 25-2870

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
WASHINGTON, D.C. 20451

November 4, 1975

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[REDACTED]
Office of Legislative Counsel
Central Intelligence Agency
Washington, D.C. 20505

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[REDACTED]
Enclosed is a revised draft of the implementing legislation for the BW Convention, which reflects the changes discussed during our meeting concerning comments raised by the CIA. We would appreciate your obtaining the proper clearances within the Agency as soon as possible.

Sincerely,

James L. Malone
James L. Malone
General Counsel

Enclosure:

As stated.

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A BILL

To implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,
That (a) Title 18, United States Code, is amended by adding after Chapter 9 the following new Chapter:

"Chapter 10. -- BIOLOGICAL WEAPONS

"Sec.

"175. Definition.

"176. Biological weapons.

"§175. Definition

"As used in this chapter, 'biological weapon' means --

"(a) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

"(b) any apparatus, equipment, device, or means of delivery specifically designed to disseminate a microbial or other biological agent or toxin as defined in subsection (a) for hostile purposes or in armed conflict.

"§176. Biological weapons.

"(a) Whoever being a national of the United States, or otherwise under or within the jurisdiction or control of the United States, knowingly develops, produces, possesses, stockpiles, transfers, acquires, or retains any biological weapon, within or without the territory of the United States, shall be fined not more than \$100,000 or imprisoned for not more than 15 years, or both.

"(b) The District Courts of the United States, including the Courts enumerated in Section 460 of Title 28, United States Code, shall have jurisdiction in proceedings instituted by the Attorney General to enjoin development, production, possession, stockpiling, transfer, acquisition, or retention of any biological weapon by any person under or within the jurisdiction or control of the United States. For the purpose of this Section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

"(c) Any biological weapon shall be subject to seizure and forfeiture pursuant to the procedures set forth in Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1276).

"(d) In case of a threat to use any biological weapon within the territory or jurisdiction of the United States the Attorney General may request appropriate assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule or regulation to the contrary, notwithstanding."

(b) The analysis of Title 18, United States Code, is amended by adding after the item for Chapter 9 the following new item:

"10. Biological Weapons ----- 175".

SECTIONAL ANALYSIS

The Bill would add to Title 18 of the United States Code a new Chapter 10, "Biological Weapons," consisting of new Sections 175 and 176.

Proposed Section 175 defines "biological weapon" for the purposes of this new Chapter. The definition includes (a) microbial or other biological agents or toxins (whatever their origin or method of production) of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes -- all of which are dealt with in Clause (1) of Article I of the Convention, and (b) means for the dissemination of such agents or toxins -- which are dealt with in Clause (2) of Article I of the Convention. The first half of the definition adopts the language of Clause (1) of Article I of the Convention. The second half of the definition is identical in substance with Clause (2) of Article I of the Convention, with the word "apparatus" substituted for the word "weapons" since the latter is now the subject of the entire Section 175, and the word "use" replaced by the word "disseminate" to conform with the terminology of Section 1516 of Title 50 of the United States Code. As a practical matter, the latter two terms are identical, since any use of substances in this context would entail their dissemination. Because the word "designed" might be misconstrued to mean a device merely having the capability to disseminate certain substances rather than

a device intended to disseminate such substances, the phrase "specifically designed" is employed in the Bill.

The Bill does not reach peaceful activities such as development or production of biological agents or toxins for the protection of man, animals, plants, and the environment from pests and diseases, or for immunization, therapy, or medical research. The Convention specifically exempts agents and toxins used for "prophylactic, protective or other peaceful purposes" In explanation of those provisions, the Secretary of State noted:

"The word 'prophylactic' refers to activities related to the protection of the human body from the effects of organisms or substances to which an individual might be directly exposed. It encompasses medical activities such as diagnosis, therapy and immunization, and related research. The term 'protective' applies to the development of such equipment as decontamination systems, protective masks and clothing, air and water filtration systems, and detection and warning devices. Laboratory quantities of certain agents and toxins might well be required for research and testing in these areas." Ex. Doc. Q, 92nd Cong., 2d Sess. at 3.

On the other hand, the Secretary added in his summation that

" . . . the terms 'prophylactic' and 'protective' are not intended to convey any broader meaning which would in any way permit possession of biological agents or toxins for weapons purposes on the theory that such weapons were for 'defensive' warfare, retaliation or deterrence."

Id.

Proposed Section 176(a) of Title 18 creates the crime of knowingly developing, producing, possessing, stockpiling, transferring, acquiring or retaining biological weapons. The obligation contained in Article IV of the Convention states that any necessary implementing measures should be applicable "within the territory of such State, under its jurisdiction or under its control anywhere." The jurisdictional provision of the proposed Section of the Bill meets this obligation. The penalty provision parallels Sections 2201 and 2301 of the proposed Federal Criminal Code.

Subsection (b) permits the Attorney General to institute suits in the United States District Courts for an injunction against developing, producing, possessing, stockpiling, transferring, acquiring, or retaining any biological weapon. The requirement of a "knowing" violation contained in subsection (a) has been deleted from subsection (b) to permit the United States to seek an injunction whether or not the defendant knew the character of the substances in question.

Subsection (c) utilizes the seizure and forfeiture procedures contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21, United States Code, Section 881), and is identical in scope to subsection (b).

Subsection (d) is a response to the recognition that if a terrorist group threatens to use a biological weapon, more than the investigative focus of the Federal Bureau of Investigation will be necessary, in terms of manpower and expertise, to meet and neutralize the threat. Consequently, the Federal Bureau of Investigation may, through the Attorney General or his designated Assistant, request assistance from other Federal, State, or local agencies including the Army, Navy, or Air Force. The provision parallels similar provisions in Sections relating to attacks upon members of Congress, the President, or Vice President (Title 18, United States Code, Sections 351(g) and 1751(i)).

- 4 -

Together, subsections (a)-(d) of Section 176 would implement the requirement of Article IV of the Convention that the United States, "in accordance with its constitutional procedures, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention" of any biological weapon within its territory, jurisdiction or control.